

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77801601
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examining Attorney has refused registration of the subject application based on a likelihood of confusion with U.S. Trademark Registration No. 3,451,475 for the mark POWERLITE, which is owned by HBI Branded Apparel Enterprises, LLC ("HBI"). Considering many factors, including the difference between Applicant and HBI's goods, the respective market parameters, the lack of consumer confusion to date, and that there is no viable likelihood of confusion between the parties' marks, Applicant and HBI have executed the attached Coexistence and Consent to Use and Registration Agreement. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal and approve the subject application for publication as soon as possible.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2010/12/13/20101213155606738034-77801601-001_001/evi_3810611210-150937525_._POWER-LITES_Consent.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT11\IMAGEOUT11\778\016\77801601\xml1\RFR0002.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\016\77801601\xml1\RFR0003.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\016\77801601\xml1\RFR0004.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\016\77801601\xml1\RFR0005.JPG
DESCRIPTION OF EVIDENCE FILE	Coexistence and Consent to Use and Registration Agreement

SIGNATURE SECTION	
RESPONSE SIGNATURE	/Martha Gayle Barber/
SIGNATORY'S NAME	Martha Gayle Barber
SIGNATORY'S POSITION	Attorney of Record, NC Bar Member
DATE SIGNED	12/13/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Dec 13 15:56:06 EST 2010
TEAS STAMP	USPTO/RFR-38.106.112.10-2 0101213155606738034-77801 601-47015f4945flacc88db65 20dab826b8ef8e-N/A-N/A-20 101213150937525326

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77801601** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Examining Attorney has refused registration of the subject application based on a likelihood of confusion with U.S. Trademark Registration No. 3,451,475 for the mark POWERLITE, which is owned by HBI Branded Apparel Enterprises, LLC ("HBI"). Considering many factors, including the difference between Applicant and HBI's goods, the respective market parameters, the lack of consumer confusion to date, and that there is no viable likelihood of confusion between the parties' marks, Applicant and HBI have executed the attached Coexistence and Consent to Use and Registration Agreement. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal and approve the subject application for publication as soon as possible.

EVIDENCE

Evidence in the nature of Coexistence and Consent to Use and Registration Agreement has been

attached.

Original PDF file:

http://tgate/PDF/RFR/2010/12/13/20101213155606738034-77801601-001_001/evi_3810611210-150937525_.POWER-LITES_Consent.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Martha Gayle Barber/ Date: 12/13/2010

Signatory's Name: Martha Gayle Barber

Signatory's Position: Attorney of Record, NC Bar Member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77801601

Internet Transmission Date: Mon Dec 13 15:56:06 EST 2010

TEAS Stamp: USPTO/RFR-38.106.112.10-2010121315560673

8034-77801601-47015f4945f1acc88db6520dab

826b8ef8e-N/A-N/A-20101213150937525326

COEXISTENCE AND CONSENT TO USE AND REGISTRATION AGREEMENT

This Agreement is made and entered into and effective this 13th day of December, 2010, by and between HBI Branded Apparel Enterprises, LLC, a limited liability company of the state of Delaware, having its principal place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina 27105 (hereinafter "HBI") and GoldToeMoretz, LLC, a limited liability company of the state of Delaware, having its principal place of business at 514 West 21st Street, P.O. Box 580, Newton, North Carolina 28658 (hereinafter "GoldToeMoretz").

WITNESSETH:

WHEREAS, HBI is the owner of U.S. Trademark Reg. No. 3,451,475 directed to the mark the POWERLITE covering "bras; tank tops" in International Class 25 and represents that it has used the mark accordingly since at least August 2007; and

WHEREAS, GoldToeMoretz owns U.S. Application No. 77/801,601 for the mark POWER-LITES for use with "footwear and socks" in International Class 25 and represents that it has used the mark accordingly since at least 2003; and

WHEREAS, the parties are desirous of formally setting forth their agreement regarding the coexistence of the foregoing trademarks and their respective consent to coexistence, use and registration of those marks.

NOW, THEREFORE in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. Both parties agree that there is no likelihood of confusion caused by the concurrent use and registration of the marks POWERLITE by HBI and POWER-LITES by GoldToeMoretz in the United States in association with their respective goods.
2. The parties hereto stipulate that while the respective marks POWERLITE and POWER-LITES are similar, the parties are in the best position to know the commercial interface between the respective marks and goods, and the parties have used their respective marks for over two years without any known incidents of confusion. The parties agree to contact each other and work together in good faith to resolve any issues which may arise in the unlikely event that confusion occurs.
3. HBI consents to the use and registration of the mark POWER-LITES by GoldToeMoretz in the United States with "footwear and socks" in Int. Class 25, including ancillary services, namely, the promotion and distribution of such goods. **HBI agrees it will not use or attempt to register the POWERLITE mark in the United States in connection with footwear, socks, hosiery, or ancillary services.**
4. GoldToeMoretz consents to the use and registration of POWERLITE by HBI in the United States with "bras; tank tops" in Int. Class 25, including ancillary services, namely,

the promotion and distribution of such goods. GoldToeMoretz agrees it will not use or attempt to register the POWER-LITES mark in the United States in connection with bras, tank tops, intimate apparel, underwear, or ancillary services.

5. Both parties agree to promptly execute, at the requesting party's expense, any future consent or other agreement that might reasonably be needed for registration of the respective marks for the designated respective goods in the United States.
6. The parties agree that this Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions and agreements between them. Neither of the parties shall be bound by oral modification of this Agreement or by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement other than expressly provided herein, or as duly set forth in any subsequent writing signed by both parties.
7. This Agreement is and shall be perpetually binding upon and inure to the benefit of all subsidiaries, affiliates, divisions, predecessors and successors of each of the parties, together with their assigns, officers, agents, directors and employees.
8. There will be no publicity as to the terms, conditions or existence of this Agreement, except to the extent agreed upon in writing between the parties, provided, however, that both parties may make reference to this Agreement and provide third parties with copies or excerpts therefrom in connection with internal business purposes, the prosecution of applications for registration, and otherwise incident to the efforts by each party to obtain and maintain exclusive rights to their respective marks.
9. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document.
10. All notices and requests in connection with this Agreement shall be in writing, addressed to the following:

If to GoldToeMoretz: Martha Gayle Barber, Esq.
Alston & Bird, LLP
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280

With a copy to: Gregory D. Huffman, Esq.
Vice President and General Counsel
GoldToeMoretz, LLC
West 21st Street, P.O. Box 580,
Newton, NC 28658

If to HBI: Warren L. Zeserman, Esq.
Associate General Counsel
Hanesbrands Inc.

1000 E. Hanes Mill Brand
Winston-Salem, NC 27105

With a copy to: Randel S. Springer
 Womble Carlyle Sandridge & Rice, PLLC
 One West Fourth Street
 Winston-Salem, NC 27101

11. Each person signing this Agreement on behalf of a corporation warrants and represents that he or she has full and complete authority to enter into this Agreement on behalf of that corporation, without exception.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have set their hand the day and year below written.

HBI BRANDED APPAREL ENTERPRISES, LLC

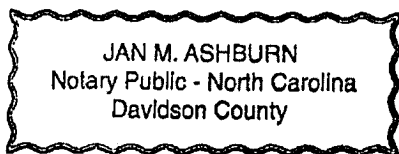
By: [Signature] Warren L. Zeserman

Office: VP & Asst. Secretary

Date: December 10, 2010

Subscribed and sworn to before me, a Notary Public of the State of NC, this 10 day of December, 2010.

[Signature]
Notary Public



SEAL

My Commission Expires: 8-13-2013

GOLDTOEMORETZ, LLC

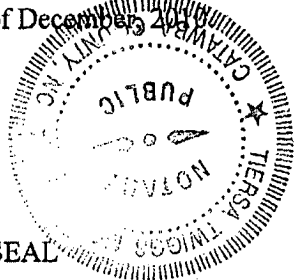
By: [Signature] Gregory D. Huffman

Office: Vice President & General Counsel

Date: December 13, 2010

Subscribed and sworn to before me, a Notary Public of the State of N. Carolina, this 13 day of December, 2010.

[Signature]
Notary Public



SEAL

My Commission Expires: February 4, 2012